

**SAN MARCOS POLICE DEPARTMENT
POLICIES AND PROCEDURES MANUAL**

Section Title: Protective Orders

General Order: 306

Date Issued: January 17, 2004

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Effective Date: February 2, 2015

Issuing Authority:



Chase Stapp, Chief of Police

I. POLICY

Protective orders are critical in protecting family members from the threat of harm. A peace officer's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and the victim. The investigating officer will protect the victim without regard to the relationship between the alleged offender and victim.

II. PURPOSE

The purpose of General Order 306 is to specify Department guidelines for the proper handling of protective orders, from their entry into the computer system, to the disposition of violations, including reports and arrests.

III. DEFINITIONS

- A. Emergency Protective Order – An order issued by a magistrate at the time of a defendant's appearance after an arrest for an offense of family violence or an offense of stalking. An emergency protective order remains in effect until the 61st day or 91st day after issuance. Texas Code of Criminal Procedure §17.292.
- B. Family Violence – An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; abuse by a member of a family or household toward a child of the family or household; or dating violence.
- C. Protective Order – An order issued by a court after a formal hearing, against a specifically named individual; valid for a period not to exceed two years. Texas Family Code § 85.025.
- D. Temporary Ex Parte Order – An order issued by a court against a specifically named individual, valid for a period not to exceed 20 days; may be reconsidered by the court for an extension of another 20 days on a specific date listed in the order. Texas Family Code § 83.001.

IV. DURATION AND VERIFICATION OF PROTECTIVE ORDERS

- A. Temporary Ex Parte Orders
 - 1. A temporary ex parte order is valid for the period specified in the order, but does not exceed twenty (20) days.
 - 2. When the court grants the order, or upon the request of the applicant, the temporary ex parte order expiration date may be extended for another twenty (20) days, and may be extended for other twenty (20) day periods.
- B. Emergency Protective Order
 - 1. An emergency protective order is valid on issuance and remains in effect until the sixty-first (61st) day after the date of issuance unless the offense involves Family Violence AND Serious Bodily Injury or the use or exhibition of a Deadly Weapon than it remains in effect until the ninety first (91st) day after the date of issuance.
 - 2. When additional protection is necessary, a protective order may be requested prior to the expiration of the emergency protective order.
- C. Protective Order
 - 1. A protective order is valid for two (2) years from the date the original order was granted by the court.
 - 2. A protective order cannot be modified to extend its validity beyond the two (2) years.
- D. Officers requesting information concerning protective orders, temporary ex parte orders, or emergency protective orders may contact the Communications Unit to obtain that information.
- E. A copy of protective orders, temporary ex parte orders, and emergency protective orders are filed in the Communications Unit as a safeguard against computer failure.
- F. It is possible for a protective order, temporary ex parte order, or emergency protective order to exist and not be in the computer system or on file in the Communications Unit files due to a time lapse between the time an order is issued and the time it reaches the Department. In these cases, the officer must see the complainant's copy of the protective order or emergency protective order before making an arrest, or see a copy of the temporary ex parte order for directions before assisting the complainant.

V. ARRESTS FOR VIOLATIONS OF PROTECTIVE ORDERS OR EMERGENCY PROTECTIVE ORDERS

- A. An officer may arrest for violation of a protective order or emergency protective order when the officer knows that such an order is active and that the party restrained by the order has committed a violation of the terms of the order.
- B. Protective orders and emergency protective orders may contain numerous prohibitive terms. Generally, a person commits a class A misdemeanor if, in violation of a protective order or emergency protective order, he knowingly or intentionally:

1. Commits family violence;
 2. Communicates:
 - a. Directly with a member of the family or household in a threatening or harassing manner;
 - b. A threat through any person to a member of the family or household; or
 - c. In any manner with the member of the family or household except through the person's attorney or a person appointed by the court, if the order prohibits any communication with a member of the family or household.
 3. Goes to or near any of the following places as specifically described in the protective order:
 - a. The residence or place of employment or business of a member of the family or household; or
 - b. Any childcare facility, residence, or school where a child protected by the protective order normally resides or attends.
 4. Engages in conduct specifically toward a person who is a member of the family or household, including following the person that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person.
- C. When a person commits a violation of a protective order or emergency protective order on more than two (2) occasions, or commits an assault or stalking during the violation, the person commits a third degree felony.
- D. Officers will arrest for any of the above violations of a protective order or emergency protective order when the violation is committed in their presence or view.
- E. Officers may arrest for any of the above violations of a protective order or emergency protective order when the violation is not committed within their presence or view.
- F. Officers will process persons arrested for violations of protective orders or emergency protective orders in accordance with General Order 207, Care, Transport and Booking of Prisoners.

VI. PROCEDURE FOR VIOLATIONS OF TEMPORARY EX-PARTE ORDERS

- A. Violation of a Temporary Ex Parte Order is criminally enforceable, if served, meaning a peace officer may arrest for such a violation. Violation is also enforceable by contempt of court proceedings with a fine of not more than \$500 and/or confinement in jail for not more than six months.
- B. Officers, as directed by the temporary ex parte order, may be required to do the following:
 1. To accompany the person obtaining the order to the residence covered by the order while the person takes possession of the residence;
 2. If the person excluded from the residence occupies the residence, to inform the person that the court has ordered the person excluded from the residence; and

3. Protect the person obtaining the order while they take possession of the residence.
- C. If the person excluded from the residence refuses to vacate the residence, the officer will stand by while the person who has obtained the order takes possession of their necessary personal property.

VII. OFFICER'S RESPONSIBILITIES

- A. Officers investigating cases involving family violence will advise the victim(s) of the following:
1. Their rights and remedies by providing the complainant the *Notice to Adult Victims of Family Violence*;
 2. If any arrest is made for family violence, that the complainant may request an emergency protective order prior to the arrested person's being placed into the Hays County Jail; or
 3. If necessary, the officer, an attorney, a guardian of the victim, or a magistrate may request an emergency protective order.
- B. An officer will write an incident report regardless of whether an arrest is made for a violation of a protective order or emergency protective order.
1. The offense is a violation of P.C. 25.07, Violation of a Protective Order or Magistrate's Order.
 2. The officer will list the court that issued the protective order as the complainant.
 3. The officer will list the person(s) protected by the court order either as the reporting person or as witnesses to the violation of the court order.
 4. The officer should list in the details of the incident report the specific violation(s) of the protective order.
- C. An officer SHALL issue an order for an Emergency Protective Order if the arrest is for an offense of Family Violence AND Serious Bodily Injury or the use or exhibition of a Deadly Weapon. CCP. Art. 17.292
- D. The officer will attach a copy of the protective order or emergency protective order to the copy of the offense report submitted to the Magistrate's Office.
1. Officers may photocopy the protective order or emergency protective order on file in the Communications Unit; or
 2. Officers may photocopy the reporting person's copy of the protective order or emergency protective order, which the officer will return to the reporting person before going back into service.
- D. When an arrest is made for an act of family violence, the officer will obtain necessary information to obtain an emergency protective order if the complainant, the officer, an attorney, or a magistrate requests an emergency protective order while the arrested person is being magisterated.
- E. Information necessary for the officer to apply for an emergency protective order includes:
1. Names of individuals, including children, covered by the court order;

2. Addresses of residence and place of employment;
3. Addresses of child care facilities or schools attended by children.